

W.A.(MD)No.1440 of 2024 and W.P.(MD)No.26577 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.1440 of 2024
and
C.M.P.(MD)No.11166 and 13797 of 2024
and
W.P.(MD)No.26577 of 2024
and
W.M.P.(MD)Nos.22534, 22538 and 22539 of 2024**

W.A.(MD)No.1440 of 2024:

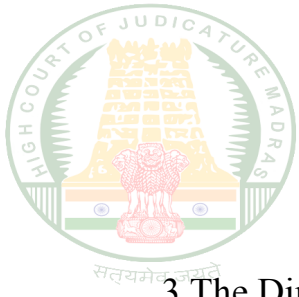
A.Velmurugan

... Appellant

Vs.

1.Tamil Nadu Public Service Commissioner,
represented by its Secretary,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai-600 003.

2.The Deputy Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C., Nagar,
Park Town, Chennai-600 003.



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3.The Director of Prosecution,
O/o.Director of Prosecution,
Tamil Nadu Slum Clearance Board,
Annex Building 1st Floor,
Complex No.5, Kamarajar Salai,
Chennai-5.

4.The Secretary to Government,
Union of India,
Human Resources Management Department,
New Delhi.

5.The Secretary to Government, Union of India,
Social Welfare Department,
New Delhi.

6.The Secretary to Government,
State of Tamil Nadu,
Human Resources Management Department,
Chennai.

... Respondents

[Respondents 4 to 6 are suo motu impleaded vide order dated 03.09.2024]

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.16288 of 2024, dated 19.07.2024.

W.P.(MD)No.26577 of 2024:

A.Velmurugan

... Appellant

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai.



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2.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
Chennai 600 003

3.The Director of Prosecution,
Having its Office at Tamil Nadu Slum Clearance Board,
Annex Building 1st Floor, Complex No. 5,
Kamarajar Salai, Chennai 600 003

4.J.Saravana Kumar

5.A.Geetha

... Respondents

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the entire records of the 1st respondent pertaining to the impugned Cancelled Order G.O.(4D) No. 78 dated 26.09.2024 for Notification No. 10/2021 dated 25.08.2021 in Posts of Assistant Public Prosecutor Grade - II in Prosecution Department quash the same as illegal, directing the 2nd respondent to operate the waiting list / reserve list for Notification No. 10/2021 dated 25.08.2021 in Posts of Assistant Public prosecutor Grade - II in Prosecution Department in accordance with section 27 of Tamil Nadu Government servants (Conditions of Service) Act 2016 and directing the first and second respondents to permit the petitioner to continue the service for the notification No.10/2021 dated 25.08.2021 in accordance with Mahesh Gupta & Ors Vs. Yaswant Kumar Ahirwar and others reported in (2007) SCC 621 within the time stipulated by this Court.



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For Petitioner	:Mr.A.Saravanan
For R1 & R3	:Mrs.D.Farjana Ghoushia Special Government Pleader
For R2	: Mr.J.Anand Kumar

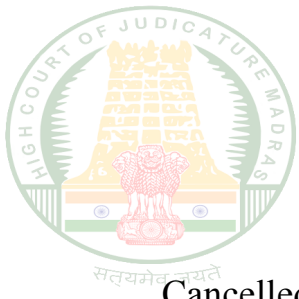
COMMON JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

Since the issue involved in the writ appeal and the writ petition is one and the same, both the writ appeal as well as the writ petition are taken up together, heard and disposed of by way of this common order.

2.(i) The W.A.(MD)No.1440 of 2024 was filed by the writ petitioner challenging the order dated 19.07.2024 passed in W.P.(MD)No.16288 of 2024. The writ petition was filed for issuance of Writ of Certiorari to quash the Memorandum No.691/OTD-A4/2020 dated 05.07.2024 issued by the 2nd respondent therein. The said order has intimated that as per the revised selection list, the appellant did not reach the zone of selection.

2.(ii) The W.P.(MD)No.26577 of 2024 was filed by the same person for issuance of Writ of Certiorarified Mandamus to quash the impugned



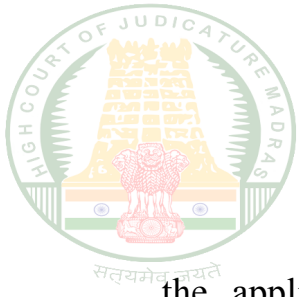
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Cancelled Order G.O.(4D) No. 78 dated 26.09.2024 for Notification No. 10/2021 dated 25.08.2021 in Posts of Assistant Public Prosecutor Grade - II and consequently to direct the 2nd respondent to operate the waiting list / reserve list in accordance with section 27 of Tamil Nadu Government servants (Conditions of Service) Act 2016 and direct the respondents to permit the petitioner to continue the service in accordance with Mahesh Gupta & Ors Vs. Yaswant Kumar Ahirwar and others reported in (2007) SCC 621.

3. The writ petitioner is an advocate by profession having enrolled on 05.11.2008 in Enrolment Number Ms.2581/2008, having 15 years of experience. The petitioner is an aspirant to the post of Assistant Public Prosecutor, Grade-II in the Prosecution Department had made application to the Tamil Nadu Public Service Commission pursuant to Notification No.10 of 2021, dated 25.08.2021.

4. The educational qualification prescribed in the notification is that the applicant must possess a B.L. Degree, must be a member of the Bar, must possess adequate knowledge of Tamil, and must have had active practice in criminal courts for a period of not less than five years. The TNPSC has rejected



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the application of the petitioner for the reason that no Criminal Court experience has been stated in the experience certificate uploaded by him. Challenging the same, the petitioner filed a writ petition in W.P.(MD)No.9296 of 2022 and the same was allowed vide order dated 12.08.2022. The respondents had challenged the writ order in W.A.(MD)No.1423 of 2022 and the same was dismissed. Therefore, the writ petitioner/appellant was appointed as Assistant Public Prosecutor.

5. In such circumstances, all of a sudden, the selection of the writ petitioner/appellant was cancelled. Challenging the cancellation of selection, writ petition was filed in W.P.(MD)No.16288 of 2024, which was dismissed by this Court vide order dated 19.07.2024. Challenging the same, the writ petitioner/appellant filed the present W.A.(MD)No.1440 of 2024. During the pendency of the writ appeal, the appointment order of the writ petitioner/appellant was also cancelled. Hence, the writ petitioner/appellant has filed the present writ petition in W.P.(MD)No.26577 of 2024 challenging the said order.



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6. The learned counsel for the appellant submits that the appellant is working as Assistant Public Prosecutor Grade II from 25.03.2024 having selected in the process of selection. Even then, without affording an opportunity of hearing, the appellant was dislodged from the said post, which is nothing but a clear violation of principles of natural justice.

7. The learned Standing Counsel appearing on behalf of the Tamil Nadu Public Service has reiterated the contentions raised in the counter affidavit.

8. Heard the learned counsel appearing on either side and perused the materials placed on record.

9. It is seen that the selection was conducted for 50 vacancies out of which two was allotted to ortho and the petitioner is having 50% disability comes under the reservation of ortho. Based on the interim order passed in W.A.(MD)No.1423 of 2022 one post was kept vacant for the petitioner only under the category of GT(G)(LD), since no vacancy had been announced for the category under MBC/DC(G)(LD) in the notification.

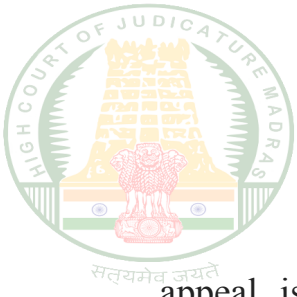


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10. In the meanwhile, another candidate namely J Saravanakumar (BC community) had claimed as differently abled person under One Arm (OA) category in his online application and he was admitted to oral test and attended counselling on 15.12.2022. Based on his claim he was eligible to be considered under GT(G), BC(G), GT(G)(LD) and BC(G)(LD) categories. Due to vacancy of GT(G)(LD) was kept vacant for the petitioner, the said J.Saravakumar was considered for GT(G), BC(G) and BC(G)(LD). During counselling one A.Geetha (267.75) who had secured more marks than J.Saravanakumar (260.00) had been selected under BC(G)(LD) category, hence no vacancy was available for J.Saravanakumar.

11. Challenging the selection process batch of cases were filed by several candidates and the High Court had passed final orders dated 20.11.2023. Thereafter, in compliance with the final order, the candidature of A.Velmurugan and J.Saravanakumar was considered on merits for selection. The petitioner A.Velmurugan had secured more marks than J.Saravanakumar and was selected for the post of public prosecutor which was kept vacant. The said J.Saravanakumar had filed Cont.Pet.No.1033 of 2024. While hearing the contempt petition on 28.06.2024, the Court had observed that once the writ



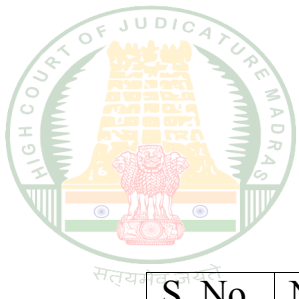
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appeal is dismissed, the application of A. Velmurugan should have been considered to be valid as on date it is made, then in such case A.Geetha who has secured 267.75 marks should have been appointed under GT(G)DAP and the BC(G)DAP vacancy alone should be taken to be vacant in which J.Saravanakumar should have been appointed. Then A.Velmurugan cannot be considered under communal category since he has not come within the zone of consideration in GT(G)DAP and there is no vacancy under MBC(DC)DAP. The said observation is as per rules of reservation.

12. Further it is settled proposition that the candidates with higher marks cannot be placed in their reserved categories and will have to be first considered under open categories.

13. Under these circumstances, the TNPSC had reworked the selection process, in which the appellant was not coming within the zone of selection. For which the respondent had provided the details which is stated in the tabulation hereunder:



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S. No.	Name of the candidates with marks	Previous selection status	Present selection status
1	D.Geetha 267.75	BC(G)(LD)	GT(G)(LD)
2	A.Velmurugan 262.75	GT(G)(LD)	Not reached the zone of selection
3	J.Saravanakumar 260	Not reached the zone of selection	Considered under BC(G)(LD) turn

14. After perusing the materials placed on record and the submissions made on either side, this Court is of the view that the petitioner selection process was conducted as per law and the petitioner/ appellant has not come within the zone of consideration. Hence, this Court is not inclined to entertain the writ appeal.

15. In view of the order passed in the writ appeal, no further orders are required to be passed in the writ petition. Accordingly, the writ petition and the writ appeal are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [S.S.Y., J.]
04.04.2025

Index : Yes / No
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J.NISHA BANU, J.

and

S.SRIMATHY, J.

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